

86th Legislative Session – 2011

Committee: House Judiciary

Monday, February 14, 2011

P - Present
E - Excused
A - Absent

Roll Call

P Abdallah
P Boomgarden
P Feinstein
P Gibson
P Hansen (Jon)
P Killer
P Kopp
P Nelson (Stace)
P Russell
P Tornow
P Turbiville
P Gosch, Vice-Chair
P Hunt, Chair

OTHERS PRESENT: See Original Minutes

The meeting was called to order by Chair Hunt.

MOTION: TO APPROVE THE MINUTES OF FEBRUARY 9, 2011

Moved by: Hansen (Jon)
Second by: Tornow
Action: Prevailed by voice vote.

HB 1155: revise various trust provisions.

Presented by: Bret Afdahl, SD Division of Banking

MOTION: DO PASS HB 1155

Moved by: Feinstein
Second by: Kopp
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION AMEND HB 1155

1155ja

On page 29 of the printed bill, after line 14, insert:

" Section 42. That § 10-40A-11 be amended to read as follows:

10-40A-11. A will ~~or, trust, or other instrument~~ of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction, inclusion ratio, applicable fraction, or any section of the Internal Revenue Code relating to the federal estate tax or generation-skipping transfer tax, or that measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the federal estate tax and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying ~~on December 31, 2009~~ in 2010 regardless of whether the decedent's personal representative or other fiduciary elects not to have the estate tax apply with respect to the estate. This provision does not apply with respect to a will ~~or, trust, or other instrument that is executed or amended after December 31, 2009,~~ or that manifests an intent that a contrary rule applies ~~if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax. If the federal estate or generation-skipping transfer tax becomes effective before that date, the reference to January 1, 2011, in this section refers instead to the first date on which such tax becomes legally effective.~~

Section 43. That chapter 10-40A be amended by adding thereto a NEW SECTION to read as follows:

The personal representative, trustee, other fiduciary, or any affected beneficiary under the will, trust, or other instrument may bring a proceeding to determine whether the decedent intended that the will, trust, or other instrument be construed in a manner other than as provided in § 10-40A-11. Any proceeding pursuant to § 10-40A-11 and sections 43 and 44 of this Act shall be commenced prior to January 1, 2012. In such a proceeding, the court may consider extrinsic evidence that contradicts the plain meaning of the will, trust, or other instrument. The court has the power to modify a provision of a will, trust, or other instrument that refers to the federal estate tax or generation skipping transfer tax laws as described in § 10-40A-11 to conform the terms to the

decedent's intention or achieve the decedent's tax objectives in a manner that is not contrary to the decedent's probable intention. The court may provide that its decision, including any decision to modify a provision of a will, trust, or other instrument shall be effective as of the date of the decedent's death. Any person who commences a proceeding pursuant to § 10-40A-11 and section 43 and 44 of this Act has the burden of proof, by clear and convincing evidence, and persuasion in establishing the decedent's intention that the will, trust, or other instrument be construed in a manner other than as provided in § 10-40A-11.

Section 44. That chapter 10-40A be amended by adding thereto a NEW SECTION to read as follows:

For purposes of § 10-40A-11, any interested person may enter into a binding agreement to determine whether the decedent intended that the will, trust, or other instrument shall be construed in a manner other than as provided in § 10-40A-11, and to conform the terms of the will, trust, or other instrument to the decedent's intention without court approval as provided in section 43 of this Act. Any interested person may petition the court to approve the agreement or to determine whether all interested persons are parties to the agreement, either in person or by adequate representation where permitted by law, and whether the agreement contains terms the court could have properly approved. In the case of a trust, the agreement may be by nonjudicial settlement agreement. For the purposes of this section, an interested person means any person whose consent is required in order to achieve a binding settlement were the settlement to be approved by the court.

Section 45. That § 10-40A-13 be amended to read as follows:

10-40A-13. The provisions of §§ 10-40A-11 and 10-40A-12 and sections 43 and 44 of this Act apply to decedents dying after December 31, 2009, and before January 1, 2011."

Moved by: Gosch
Second by: Tornow
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1155 AS AMENDED

Moved by: Gosch
Second by: Feinstein
Action: Prevailed by roll call vote. (12-0-1-0)

Voting Yes: Boomgarden, Feinstein, Gibson, Hansen (Jon), Killer, Kopp, Nelson (Stace), Russell, Tornow, Turbiville, Gosch, Hunt

Excused: Abdallah

Chair Hunt turned the gavel over to Vice-Chair Gosch.

HB 1217: establish certain legislative findings pertaining to the decision of a pregnant mother considering termination of her relationship with her child by an abortion, to establish certain procedures to better insure that such decisions are voluntary, uncoerced, and informed, and to revise certain causes of action for professional negligence relating to performance of an abortion.

Presented by: Representative Roger Hunt (handout #1) (The Committee received for attachment to the minutes the Report of the 2005 Task Force on Abortion and discovery materials regarding Federal Court litigation of HB 1166 ((2005)).)

Proponents: Brittany Weston, Yankton, self
Alexandria Szamfit, Sioux Falls
Stacy Wollman, BHCPC
Dr. Glenn Ridder, Sioux Falls, self
Kimberly Martinez, Alpha Center
Harold Cassidy, Shrewsbury, NJ, self
Chris Hupke, SD Family Policy Council
Dale Bartscher, Family Heritage Alliance
Linda Schauer, Concerned Women For America
Travis Benson, Catholic Diocese Of Sioux Falls
Spencer Cody, SD Right to Life

Opponents: Alisha Sedor, NARAL Pro-Choice SD (handout #2)
Sam Ellingson, ACLU of SD
Gary Snow, Pierre, self
Kristin Aschenbrenner, SDANW

MOTION: AMEND HB 1217

1217ra

On page 3, line 4, of the printed bill, after "physician" insert "physically and".

On page 3, line 12, after "mother" insert "unless the pregnant mother is in the physical presence of the physician and".

Moved by: Turbiville
Second by: Hansen (Jon)
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION DEFER HB 1217 TO THE 41ST LEGISLATIVE DAY

Moved by: Gibson
Second by: Feinstein
Action: Failed by roll call vote. (4-9-0-0)

Voting Yes: Boomgarden, Feinstein, Gibson, Killer

Voting No: Abdallah, Hansen (Jon), Kopp, Nelson (Stace), Russell, Tornow, Turbiville, Gosch, Hunt

MOTION: AMEND HB 1217

1217ra

On page 3, line 4, of the printed bill, after "physician" insert "physically and".

On page 3, line 12, after "mother" insert "unless the pregnant mother is in the physical presence of the physician and".

Moved by: Turbiville
Second by: Hansen (Jon)
Action: Prevailed by voice vote.

MOTION: DO PASS HB 1217 AS AMENDED

Moved by: Turbiville
Second by: Nelson (Stace)
Action: Was not acted on.

MOTION: SUBSTITUTE MOTION AMEND HB 1217

1217rb

On page 1 of the printed bill, delete lines 7 to 13, inclusive.

On page 2, delete lines 1 to 17, inclusive.

Moved by: Feinstein
Second by: Gibson
Action: Failed by voice vote.

MOTION: DO PASS HB 1217 AS AMENDED

Moved by: Turbiville
Second by: Nelson (Stace)
Action: Prevailed by roll call vote. (9-4-0-0)

Voting Yes: Abdallah, Hansen (Jon), Kopp, Nelson (Stace), Russell, Tornow, Turbiville, Gosch, Hunt

Voting No: Boomgarden, Feinstein, Gibson, Killer

HB 1218: prohibit surrogate mother contracts, to prohibit enforcement of such arrangements, and to establish standards to award custody of children born as a result of such arrangements.

Presented by: Representative Roger Hunt
Proponents: Harold Cassidy, Shrewsbury, NJ, self
Travis Benson, Catholic Diocese Of Sioux Falls
Opponents: Kristin Aschenbrenner, SDANW (handouts #3, 4 & 5)
Representative Charles Hoffman
Eric Odenbach, Eureka, self
Kristi Moen, Sioux Falls, self
Brett Koenecke, SD State Medical Association
Tom Barnett, State Bar Association of South Dakota
Michelle Thomas, Sioux Falls, self
Lindsay Kinzer, Sioux Falls, self (handout #6)
Dianna Miller, SD Network Against Family Violence & Sexual Assault
Mitch Richter, SD Campaign for Healthy Families

MOTION: DEFER HB 1218 TO THE 41ST LEGISLATIVE DAY

Moved by: Turbiville
Second by: Gibson
Action: Prevailed by roll call vote. (9-3-1-0)

Voting Yes: Boomgarden, Feinstein, Gibson, Hansen (Jon), Killer, Russell, Tornow, Turbiville, Gosch

Voting No: Kopp, Nelson (Stace), Hunt

Excused: Abdallah

Vice-Chair Gosch returned the gavel to Chair Hunt.

HB 1237: provide for an individual mandate to adult citizens to provide for the self defense of themselves and others.

THE CHAIR DEFERRED HB 1237

HB 1241: revise certain penalties for the sale or service of an alcoholic beverage to a person under the age of twenty-one.

THE CHAIR DEFERRED HB 1241

The Chair announced that an additional House Judiciary Committee meeting has been scheduled for Thursday, February 17, 2011 in room 464.

MOTION: ADJOURN

Moved by: Kopp
Second by: Hansen (Jon)
Action: Prevailed by voice vote.

Cindy Tryon
Committee Secretary

Roger W. Hunt, Chair